land-holder, modified where necessary by Naning custom, are in order.

It is admitted that the pieces of land were tanah pesaka of the Suku Mungka Kuala Ina and that the first and second defendants were female members of that tribe and as such were entitled to be registered as the holders of those lands.

The question whether Agreement S is an illegal agreement in that its object may be, if a Court so decided, to defeat the objects of Ordinance No. 125 is not one which, in my view, arises in the present case. It may well arise if and when either of the parties to that agreement seeks to enforce in the Courts its provisions against the other. The Court would then have to consider whether or not it was illegal, and if it were unlawful it follows that it could not successfully be sued on. The maxim applicable is 'in pari delicto potior est condicio defendentis' (*per* Maugham J. in *In re the National Benefit Assurance Co.*, 1931, 1 Ch. at p. 58). But on the view I have taken of this case the question does not arise for my consideration and I make no pronouncement on the question of the legality or illegality of Agreement C.

It follows that no facts have been proved in this case to justify the Court in law or in equity declaring that the sale of the lands in question was null and void and should be set aside.

The plaintiff's claim, therefore, fails and her action is dismissed with costs.

Action dismissed.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

April 6, 1939.

CHIA TECK LEONG AND FOUR OTHERS

v.

ESTATE AND TRUST AGENCIES (1927), LIMITED.

[SINGAPORE SUIT No. 185 of 1938]

Limitation Ordinance (Cap. 16), art. 97—Claim as lawful issue of a secondary wife of a Chinese, for administration—Defence denying legitimacy — Laches and long acquiescence—Indian Marriage Act (V of 1865), ss. 5 and 9—Christian Marriage Ordinance (Cap. 82), s. 3—Polygamous union between a Chinese and a Christian—Whether a non-Christian Straits Chinese can marry a Christian woman as a secondary wife.

The Plaintiffs claimed as beneficiaries under the will of a Chinese testator for the administration of his estate They claimed to be lawful sons by a secondary wife of a son of the testator, and as such entitled to share in the testator's estate under the trusts of his Will. The plaintiff's mother was a Eurasian who had been baptised into the Roman Catholic faith but thereafter had made no profession of the Christian faith. The defence denied that the plaintiffs' mother was a lawful secondary wife, and pleaded that their claim was barred by limitation, and alternatively by laches and long acquiescence. The defence also set up the provisions of the Indian Marriage Act, 1865, and the Christian Marriage Ordinance, and contended that there could be no valid marriage between a Chinese and a Christian except in accordance with those statutory provisions.

Held, following *Lau Tai Thye* v. *Leong Yin Khean*, 1934 S.S.L.R. 158; 3 M.L.J. 110 that the substance of the claim was the establishment of the plaintiffs' status as lawful sons of a son of the testator and that the claim fell within the terms of Article 97 of the Limitation Ordinance and was barred because it had not been brought within six years from the date when the right to sue accrued and the plaintiffs attained majority.

Held further:—that there had been undue delay on the plaintiffs' part in preferring their claim, and the doctrine of acquiescence and laches would apply apart from any statutory bar.

Held also:—that the evidence established that the plaintiffs' mother was a lawful secondary wife of the testator and that the provisions of the Indian Marriage Act 1865, did not invalidate the union.

Semble:—the Indian Marriage Act 1865 and the Christian Marriage Ordinance (Cap. 82) only apply to marriages in the Christian or monogamous sense, and not to Chinese marriages in the Straits Settlements where polygamy among the Chinese is recognised.

Also:—that, if an individual is baptised as an infant in the Christian faith but never makes any definite profession of faith thereafter, then even though he may have attended a Christian school this is not sufficient evidence that the individual is a Christian for the purpose of s. 5 of the Indian Marriage Act of 1865.

WITNESS ACTION.

A Chinese, Chia Ann Siang died in 1892 leaving a will by which he directed his immoveable estate to be sold after the death of his four sons and divided among the sons or adopted sons of his sons in certain proportions. One of the four sons, Chia Keng Chiang died in 1908, and his sons, if any, would be entitled to a sixth share of the testator's estate. The bulk of the estate was distributed under the directions of the Court in 1921 on the footing that Chia Keng Chiang had died leaving no sons or adopted sons. The defendants were the administrators *de bonis non* with the will annexed of the testator, and there were certain proceeds of sale of the remaining estate for distribution by them.

The plaintiffs were the sons of Chia Keng Chiang by a woman named Blanche Richards who was a Eurasian baptized into the Roman Catholic faith. They alleged that Chia Keng Chiang married Elanche as his secondary wife in 1889 and that they were legitimate children of this union and therefore entitled to a sixth share of the estate under the will. The eldest plaintiff was born in 1892, and the youngest in 1908.

The writ in the action was issued in 1938 and in it the plaintiffs claimed as persons beneficially interested under the will of the testator to have his real and personal estate administered.

Three issues were raised in the pleadings, namely,

(a) whether there was a marriage between Chia Keng Chiang and Blanche Richards;

(b) whether any such marriage was invalidated by ss. 5 and 9 of the Indian Marriage Act, 1865, or by s. 3 of the Christian Marriage Ordinance (Cap. 82);

(c) whether the plaintiffs' claim was barred by the Limitation Ordinance (Cap. 16) or alternatively by laches and long acquiescence.

Phillip Hoalim (*R. C. H. Lim* with him) for plaintiffs.

E. R. Koek for defendants.

Cur. Adv. Vult.

HORNE, J.—The plaintiffs are brothers. Their respective ages are 47, 40, 35, 32 and 30. They are the sons of Chia Keng Chiang and Blanche Richards and they allege that Blanche was the secondary wife of Chia Keng Chiang who died in 1908. The alleged marriage took place in 1889 and the parties thereto lived together until Keng Chiang's death.

The plaintiffs now bring a suit for the administration of the estate of Chia Ann Siang, the father of Chia Keng Chiang, who died in 1892 leaving a will by which he directed that after the death of all his four sons all his immoveable property should be sold and that one-sixth of the proceeds should be paid to the sons of Chia Keng Chiang.

Proceedings in reference to this will were brought in this court in the years prior to 1919, when it was declared that Chia Keng Chiang died leaving no sons and that accordingly there was an intestacy as to this one-sixth share, which then passed to and was distributed to the next of kin of the testator in 1921. At that time Chia Keng Beng the elder of the four sons was the sole executor and presumably the proceeds of the sale were distributed by him in accordance with the Registrar's Certificate of the 7th April, 1921. Chia Keng Beng died in 1928 and the defendants were appointed Administrators *de bonis non* with the will annexed in 1931 and it has since been found that certain lands have not been sold and an order for their sale has since been made and there are some assets in the hands of the administrators.

The defendants plead that the claim is barred by the Limitation Ordinance Cap. 16 and on the authority of *Lau Tai Thye* v *Leong Yin Khean*, 1934 S.S.L.R. 158, it is submitted that the present suit is primarily one to establish a relationship with a deceased person and falls within Article 97 and is therefore barred, six years after the youngest of the plaintiffs came of age—viz: in 1930 or 8 years before the writ is issued.

The plaintiffs contend on the other hand that time is no bar because the suit falls under section 9 of Cap. 16:—

> 9—Notwithstanding anything hereinbefore contained no suit against a person in whom property has become vested in trust for any specific purpose or against his legal representatives or assigns, not being assigns for valuable consideration, for the purpose of following in his or their hands such property, shall be barred by any length of time.

Neither an executor nor an administrator is as a rule an express trustee for a legatee and also as a general rule where a suit is for administration Article 97 will apply. It is however not so much the frame of the suit as its truth and substance which will determine whether the suit falls within a particular Article of the Ordinance or will determine whether it is excepted under section 9.

The substance of the matter is the decision of the question whether the mother of the plaintiffs was in fact the secondary wife of Chia Keng Chiang. They do not ask for a declaration that she was the secondary wife but it seems that that question must be decided as a preliminary to their establishing any right to sue as legatees or beneficiaries under the will of the testator. Such a claim is a consequential claim founded on the establishment of the plaintiffs' status as sons of Chia Keng Chiang deceased.

I hold therefore that I am bound by the Court of Appeal's decision in *Lau Tai Thye* v. *Leong Yin Khean* and must apply the period of six years from the time the right to sue accrued viz: from the date of the death of the testator. The disability of minority then applies and the six years runs from the date each of the plaintiffs attained him majority. The suit is therefore time barred.

On the construction of the will there is an express trust of the immoveable property. The legal estate became vested in the executors of the will for the purpose of applying the rents for a period of time and for management thereof and at the end of the period it was to be sold and the proceeds distributed under clause 13 of the will. It was however distributed under an order of Court made in proceedings to which the plaintiffs were not parties. But even if section 9 is applied and there is no statutory bar, I cannot accede to the plaintiffs' contention that the doctrine of acquiescence and laches does not apply as between a *cestui que trust* and an express trustee. It is difficult to follow Mr. Hoahlim's argument on this point. It is mainly dependent upon passages in *Rustomji*'s Law of Limitation, 5th edition, but I observe that the learned author cites *McDonnel* v. *White*. 11 H. L. C. 570 to support the proposition that the docrine applies.

There can be no doubt from what each of the plaintiffs says to the information they received from their mother as to their relationship to Chia Keng Chiang that the question whether they were to be considered "sons" of their deceased father had been discussed and that reasons, whether right or wrong had been given to them, which, on reaching full age, they could, had they thought fit, have questioned by process of law. And I do not think it would be right to accept their evidence that none of them had any knowledge of the past distribution of the estate. There is certainly undue delay.

Whether there was a secondary Chinese marriage in fact between the parents of the plaintiffs is a difficult matter to decide after the lapse of years. It is submitted by the defendants that three things must be established (1) Cohabitation (2) an intention to form a permanent union (3) reputation among the family.

The association of Keng Chiang and the plaintiffs' mother began in 1889, before Chia Ann Siang's death and continued to 1908. In those years 6 sons (one has died) and two daughters were born. There is accordingly 19 years of association in such circumstances that one would reasonably suppose that a permanent union was intended. This period ended only by the death of one of the parties, and the other has not remarried. The children all appear to have been born in one of the houses of the Chia Ann Siang estate. The principal wife recognised the alleged secondary wife and the children addressed their father's brothers as "uncle". Blanche says that she was seventeen when the association commenced and that the parents of both of them would not consent to their marriage. There was no formal ceremony but a dinner was given where among others Keng Sian, Keng Chiang's brother was present. Keng Sian gives the necessary information to the Registrar of Births when the youngest plaintiff was born after the death of his father. The principal wife Wee Beng Neo who is now 67 says that she met Blanche before her husband took her as his secondary wife and they mutually visited each other afterwards. Wee Beng Neo has never had children and adopted the eldest plaintiff when young and she has been addressed a "Aunt" (Satae or Satim) by Blanche.

Immediately upon the death of Chia Keng Chiang Blanche and her children went to live, she says they were taken there by Keng Beng, at the family house at Teluk Ayer Street and remained there for two years. Whether this shows recognition or not it cannot be said to be the contrary of recognition.

Up to this date in spite of the absence of a ceremony I think it ought to be presumed that the status of secondary wife had been acquired by the mother of the plaintiffs.

It is not until 1914 that there is anything of contrary repute when Chia Chee Bee Neo, a younger daughter of Chia Ann Siang declares in an affidavit her brother Keng Chiang is illegitimate, had died in 1908 leaving several illegitimate children. Chee Bee Neo was then a plaintiff in Originating Summons 12/1914 when it was decided that Keng Chiang had died without sons. Neither the plaintiffs nor their mother were parties to these proceedings and by the judgment it appears to have been admitted by the defendants Keng Beng and Teck Kim (son of the deceased Keng Bock) that Keng Chiang "died leaving no son." Accordingly there are three relations of Keng Chiang in 1914 refusing to recognise Blanche as a secondary wife. Whether they were acting in good faith it is difficult to say. The fact remains that they or their estates all shared eventually in the one-sixth share of the sons of Keng Chiang valued about $250,000. That fact would certainly incline them all to accept the view that Blanche being a Christian could not make a valid polygamous marriage with a non-Christian Chinese. The affidavit of Chee Bee Neo, and the affidavit of Chia Keng Beng sworn in 1919 stating that Keng Chiang had no son or adopted son are, in my opinion, expressions of opinion as to the status of the plaintiffs, and cannot be given much weight as evidence against the long recognition accorded to Blanche by those immediately concerned. With regard to this latter affidavit Mr. Zehnder in whose office it was drafted on Keng Beng's instructions says he took it for granted that Blanche was a Christian, that is in 1919; whereas according to Blanche from her marriage at the age of 17 down to four years ago she had done nothing which could be described as a profession of Christianity. She is now a Malay-speaking woman who dresses in Straits Chinese fashion of many years ago, and was not sworn as a Christian in this Court and her children, the plaintiffs, have been brought up as and have married as Chinese, and at these marriages Blanche took part in the same way as other Chinese mothers do.

It is probable that Keng Beng misled Mr. Zehnder as to the facts of the matter in 1919.

Keng Beng's conduct from the period 1908 to 1919 in relation to the plaintiffs requires careful examination. At first he takes them and their mother into the family house. This act it is suggested is merely one of charity. I should imagine that any feelings of charity could be satisfied by a money allowance. And it certainly seems strange to bring a mistress and her children into the family house. That act, I think points more towards recognition as a secondary wife. Then there is his recognition of the children and his interest in them. During the

same period he is however declaring to the plaintiffs' mother that her sons being sons of a second wife have no rights under the will. This statement of Keng Beng's view is however conveyed by Blanche to Chia Teck Hwee as "the children of the unmarried wife." Nevertheless such children it is admitted by Lee San Seng who was an adopted daughter of Keng Bock and later became a secondary wife of Keng Beng, did address Keng Beng as uncle and for many years after Keng Chiang's death there was a close association between the plaintiffs and Keng Beng.

So far as cohabitation and reputation is concerned, I think, the evidence is sufficient to support the presumption that Blanche was a a secondary wife. As regards the intentions of Keng Chiang and herself to form a permanent union, there is certainly no ceremony and that is unusual, but there was a feast and there is recognition by the principal wife and no evidence of non-recognition until a property interest arose. On the whole therefore and having regard to the class of evidence usually accepted in such cases I find the secondary marriage to be established in fact.

I now turn to the submission that by section 3 of the Indian Marriage Act any marriage made by Blanche and not solemnized in accordance with that Act is void. It is this view of the law, which I conclude, from the evidence generally, was adopted by the family after the death of Keng Chiang that has led to the exclusion of the plaintiffs from any benefit under the will of Chia Ann Siang.

The Christian Marriage Ordinance came into force in 1908. As the approximate date of the secondary marriage is 1889 it can have no direct application to the matter. On the 18th April 1889 Ordinance VIII of 1889 was passed declaring what Indian Acts were in force in the Colony and authorising a revised edition of them. Among these Acts is Act 5 of 1865, (The Indian Marriage Act). This Act was therefore in force in 1889. By section 5 thereof "no marriage between persons one or both of whom shall profess the Christian religion shall be solemnized unless in accordance with the provisions of the next section:—" Section 6 provided that Ministers of Religion or a Marriage Registrar under Ordinance 3 of 1880 and certain persons empowered under Part V should solemnize marriages.

Section 9 provided that "all marriages which shall be solemnized.....otherwise than in accordance with the fifth and sixth sections shall be null and void."

The plaintiffs are not seeking to establish that there was a Christian marriage, but to establish a secondary Chinese marriage. Such marriages are recognized by this Court in dealing with the administration of property of deceased Chinese in the Colony. Though it is rarely sought to establish such a marriage between a Chinese and a non-Chinese. Unless therefore this applied Indian Act can be construed as a penal prohibition of such a marriage, I do not think it can be used to support the submission of Mr. Koek that a Christian domiciled in the Colony has no capacity to contract a polygamous marriage and thus acquire the status of a *tsip*. The Act certainly penalises a Christian to the extent that if he or she enters into a connubial union, it will be void as a marriage, in the Christian or monogamous sense, unless solemnized in accordance with the Act. Accordingly if this law was applied in a Christian country which gave no legal recognition to polygamy (as is the case in England) it would have the effect of making void any alleged marriage solemnised not in accordance with it. But in this Colony where for certain purposes legal recognition has for many years, and even prior to 1889, been given to polygamy, it is difficult to place that interpretation upon it; and it cannot be used to say that, because the plaintiffs cannot establish a Christian marriage, they therefore cannot establish a polygamous marriage. valid in this Colony. So far as I understand the matter the Indian Act and the present Ordinance only regulate Christian marriages, that is marriages as understood in Christendom and has no effect upon Chinese marriages.

The cases of *Khooi Hooi Leong* v. *Khoo Hean Kwee*, 1926 A.C. 529 and *Khooi Hooi Leong* v. *Khoo Cheng Yeok*, 1930 A.C. 346 have been cited by Mr. Koek in support of his argument. Although he admits that they are not directly in his favour, yet he submits that the proper deduction from the judgments in those cases is that the Court ought not to recognize a Christian *tsip* or lawful secondary wife. The effect of Indian Marriage Act which was in force at the time was not he contends fully considered in these cases.

These two cases are usually referred to as *Petronella's Case*. Petronella was an Eurasian Roman Catholic as Blanche is assumed to be in the present case. It was alleged that Petronella had become the *tsip* of the settlor in 1853 and, though a sexual association between her and the settlor was established as a fact, it was eventually decided that the evidence did not justify any finding that she was the lawful secondary wife of the settlor. One of the facts, on which this refusal to find that she was a lawful secondary wife is based, is that "she was a Catholic who had never abandoned her religion" (1930 A.C. 353). But it was also very doubtful whether Petronella, who had entered into a Christian marriage with Richard Gaudoin in 1847, was free to marry in

1853. And certainly her association with the settlor ceased by 1856. The decision did not turn upon whether a Christian woman who is free to marry is incapable in law of contracting a lawful polygamous (secondary) marriage with a Chinaman domiciled in the Straits Settlements as is now contended before this Court.

When Petronella's alleged secondary marriage was under the consideration of the Judicial Committee in the 1926 case, there appears to be some doubt on the question whether the fact of Petronella being a Christian at the time of alleged secondary marriage was an absolute or nearly absolute bar to the appellant's claim. Their Lordships say at p. 543 of the report:—

> "The learned Judges (of the S.S. Court of Appeal) seem to have taken the view that as the lady was a Christian the Chinese law of marriage would not apply, and that as the union was polygamous the Christian Marriage Act (the Indian Act) would not apply.
>
> But it is to be remembered that this is a special kind of union. As the Supreme Court decided, and as this Board decided in the case already mentioned (*Cheang Thye Pin* v. *Tan Ah Loy*, (1920) A.C. 369) there need be no ceremony. If consent is enough it is not easy to see why a Christian woman shall be held incapable of consent. True her religion forbids a polygamous union, but it also prohibits illicit cohabitation. No question of the law of the Straits Settlements as to Christian marriages arises.
>
> If the woman be free to contract marriage, *soluta*, and the man according to his personal law is also free, *solutus*, and the particular class of marriage or union is in the abstract recognized by the law of the land, it may well be that the religious obstacle is no bar."

If the 1930 *Petronella Case* had decided that the religious obstacle was a bar, this authoritative passage. though *obiter*, would have been got rid of. The two decisions seem to leave the matter in the air and the above quotation appears also to imply that the Marriage Act, now the Christian Marriage Ordinance, has no application to the matter in question.

There are passages in the judgment in the *Six Widows Case* 12 S.S.L.R. 120 and in *Regina* v. *Willans* there cited which would suppose that the test of the validity of a union in its essence polygamous is a religion or usage involving polygamy being common to both parties, and that as a consequence the Court only recognises a Chinese marriage when both the husband and the *tsai* or and the one or more *tsips* are Chinese and non-Christian. It must, however be noted that the Court does not deal with polygamous marriages and the matrimonial rights arising therefrom. It deals primarily with the property of a deceased person, the validity of those connubial unions is recognized in this country if such unions have been made in accordance with Chinese law. But as is pointed out by Braddell J. (as he then was) in that case "the legislature has made provision for the preparation of petitions by the widow of a deceased who was of a religion allowing polygamy". From that it would appear that only the religion of the deceased was considered in these matters. In other words the personal law concerned is the personal law of the person through whom the right to property is claimed. Apparently the religion of the *tsip*, if any, is hardly taken account of in deciding the question of the validity of the union. In *Sunny Tay* v. *Seow See Neo*, 3 M.L.J. 83, the Court of Appeal decided that a secondary marriage between a Chinese man and a Japanese woman may on proper evidence be presumed from cohabitation and repute. From that case, it certainly does not seem to matter where the *tsip* comes from or what is her religion. Yet the Japanese though non-Christian are certainly monogamous. So much so that a marriage of an Englishman, a Christian presumably, to a Japanese woman in Japan was in the case of *Brinkley* v. *Attorney-General* recognized in England. (15 P.D. 76).

Presumably *Sunny Tay* v. *Seow See Neo* was decided according to Chinese law as recognized by the Court. Japanese are monogamous according to their religion—Buddhism; and Japanese law, like English law, gives validity only to monogamous marriages solemnized in accordance with the local law. So, if a monogamous Japanese may become a *tsip*, it is difficult to see why a monogamous Eurasian Christian is barred either because of her religion or because of the Marriage Act.

There are two cases which show that the Courts in England will not permit a religious disability of one of the parties to affect the validity of a marriage good in English law. (*Chetti* v. *Chetti*, 1909 P.67 and *Anwarduddin's case* (1917) 1 K.B. 634). Consequently in England there is nothing to prevent a person whose religion permits or involves polygamy entering into a monogamous marriage in England, to which the incidents of a monogamous marriage necessarily attached. (Note 15 *Dicey*).

If a religious disability involving polygamy is not allowed to render null and void a monogamous marriage in a country where only monogamous marriages are recognized, ought it to be said that a religious disability involving monogamy should be allowed to render null and void a polygamous marriage in a country where polygamous marriages are recognised. Under the Colony law, if a Chinese man, a non-Christian,

marries, under the local Marriage Ordinance, a Christian woman; then on the principle applied in *Chetti* v. *Chetti*, the incidents of a monogamous marriage necessarily attaches. There ought to be equality in this matter, but if the Christian wife in the case supposed gave her husband cause for divorce, the Chinese non-Christian husband could not petition for dissolution under Chapter 84, because that Ordinance provides that the Court can only dissolve a marriage where the petitioner professes the Christian religion. As in the Colony both polygamy and monogamy are recognized, then, if a Christian woman enters into a connubial union with a non-Christian Chinese and that union is not solemnized under the Indian Marriage Act, it would appear that the incidents of a polygamous marriage attach to the union and not the incidents of a monogamous marriage.

This is a country of mixed population and marriages between persons not of the same race are certainly not rare events. Can it be said that the Indian Marriage Act renders such a union, if one party is a Christian, null and void unless in the form provided by the Act? To do so would necessitate giving a very extended meaning to the word "marriage". I do not think it would be right to give a universal meaning to the word "marriage" so as to include within it a status based on polygamy, especially in an enactment dealing with form and registration of Christian marriages, when, under the local law both polygamous and monogamous marriages may be valid for the purpose of establishing the legitimacy of offspring and the consequent rights of succession to property. All that the Act or the Ordinance, in my opinion, provides is that if the parties desire that their union shall afterwards be recognized as a valid Christian marriage, so that their matrimonial rights and the legitimacy of their offspring may be decided according to that law. they must have their contract solemnized in the proper form before the persons designated by the Act or Ordinance and registered in accordance therewith. Consequently there is in this case no marriage under the Act. But that does not affect the question whether a status has been acquired under Chinese law as recognised by the Court. I do not therefore accept the submission that the Indian Marriage Act prohibited Blanche as a professing Christian from making a contract such as is here in question.

In India there have been some variations in the decisions upon the effect of section 5 of the Indian Marriage Act, but in *Khambatta* v. *Khambatta* (1935) 59 Bombay 273, a case where a marriage between a Muslim man and a Christian woman was under consideration, it is stated at p. 304 that the Act (Indian Marriage) has been held to apply only to marriages in the Christian sense. The authority cited is *Emperor* v. *Maha Ram* (1918) 40 Allahabad 393, where Walsh J. analyses the effect of the 1872 Indian Act which for the purposes of this case are identical with the 1865 Act and our present Christian Marriage Ordinance and expresses the same view as I have set out here viz: "The Act does not prohibit even a professing Christian from marrying otherwise than under the Act if he wishes to do so."

There is however one point which could be raised even if the construction contended for by Mr. Koek were to be adopted and that is was Blanche a Christian i.e. "a person who shall profess the Christian religion" (section 5 Act of 1865). I have grave doubt as to whether this has been established in this case and would adopt the words of Knox J. in *Emperor* v. *Maha Ram* where at p. 402 he says "I am not prepared to hold that a person is a person professing the Christian religion within the meaning of Act No. XV of 1872 (the Act replacing the 1865 Act) simply because he is baptized as an infant when he has no possibility of saying to the world what is the faith to which he belongs, nor do I attach any particular value to the fact that he attended a Christian School."

In this case it would appear to be the fact that Blanche at 17 years of age had made no profession of faith and from then down to a few years ago made no profession of the Christian faith. I think on this ground also the section 5 is inapplicable.

Solicitor for Plaintiffs—*R. C. H. Lim.*

Solicitors for Defendants—*Chan & Eber.*

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

April 26, 1939.

REX v. SAKANDAR KHAN.

[SINGAPORE MAGISTRATE'S APPEAL No. 24 of 1939]

Criminal Procedure Code (Cap. 27), s. 173 —Misjoinder of charges.

The appellant was convicted on two charges, first of accepting a bribe from a hawker contrary to s. 161 of the Penal Code; secondly of giving false information against another hawker alleging that the hawker had given him a bribe.

Held, that the mischief of s. 173 is to prevent unfairness or embarassment to the accused (1) by confusion of issues, (2) by introduction of evidence tending to shew that he is guilty of some other offence. If the offences were in the same transaction neither of such embarassments arises. The two offences in the present case had the relation of cause and effect. If the appellant had only been charged with one of the two offences, evidence of the other would have been admissible as being relevant to the issue. There had been no improper misjoinder.